

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

MARCUS ALLEN, M.D.,

Plaintiff,

v.

Case No.: 2:18-cv-00069-JES-MRM

PROVIDENT LIFE AND  
CASUALTY INSURANCE COMPANY  
and UNUM GROUP,

Defendants.

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**FINAL PRETRIAL CONFERENCE ORDER**

This case came before the Court on March 15, 2022, for a final pretrial conference prior to the March 22, 2022, jury trial. The case will be governed by the following:

1. For purposes of the jury trial, the Court and the parties will use the caption set forth above, which: (a) eliminates defendant First Unum Life Insurance Company as a party since its only involvement is with the Group Policy, which is not a subject of this trial; and (b) corrects the name of the final defendant by eliminating the "The" before Unum Group.
2. The parties may submit a short overview of the case to be used by the Court during jury selection to determine if any prospective jurors know anything about the case prior to coming to court.


3. No party may admit a deposition of a witness who also appears in court to give live testimony, except for impeachment or refreshing recollection purposes and the like, without prior permission of the Court.
4. The Court pre-admits those trial exhibits to which there are no objections, and the parties may utilize these exhibits with witnesses without formally moving their admission in front of the jury. The following Plaintiff's exhibits, from Doc. #216-1, are admitted: Plaintiff's Exhibits Number 9, 18, 19, 20, 21, 33, 38, 40, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 64, 66, 69, 70, 73, 74, 75, 76, 78, 80, and 83. The following Defendants' exhibits, from Doc. #216-2, are admitted: Defendants' Exhibits Number 1, 2, 3, 4, 12, 13, 15, 17, 18, 19, 21, 23, 24, 26, 27, 28, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 56, 58, 59, 60, 64, 65, 66, and 96.
5. The parties have withdrawn certain proposed exhibits from their respective exhibit lists because they relate to the Group Policy, which is not a subject of this trial. Therefore, Plaintiff's Exhibits 22, 24, and 41 are withdrawn, and Defendants' Exhibits 5, 6, 7, 76, 77, 78, 83, and 84 are withdrawn. Counsel need not re-number their exhibit lists,

but these numbers will simply be treated as if intentionally blank.

6. After opening statements by counsel, the Court will read to the jury the Concise Statement of Admitted Facts set forth in the Joint Final Pretrial Statement (Doc. #216, pp. 14-16, ¶¶ 1-22). The Court declines Plaintiff's request to read certain facts distilled from the Court's cross-summary judgment Opinion and Order which are found in the Joint Final Pretrial Statement (Doc. #216, pp. 17-18, ¶¶ A-N).
7. Defendants concede that Plaintiff has satisfied his burden of proof as to every element of the cause of action on which he bears the burden. Defendants concede that they bear the burden of proof on all remaining issues and sub-issues which remain to be determined by the jury. The Court will therefore grant Defendants' request to go forward with the presentation of evidence before Plaintiff, and to present rebuttal evidence if appropriate. Additionally, Defendants may give opening and closing statements first.
8. Each side will have three preemptory challenges. The Court anticipates a jury of six persons plus one or two "alternate" jurors.
9. Jurors will be allowed to take notes during the trial if they wish to do so.

10. The parties withdraw their requests that the jurors be allowed to ask questions during trial and that counsel be allowed to make interim statements to the jury.
11. The parties have agreed that the jury will decide the issues relating to liability and, if liability is found, the Court will calculate the amount of damages.
12. The parties have (at least tentatively) agreed that the closing jury instructions be given prior to the closing argument by counsel.
13. The parties hope the trial will be completed by Friday, but the jury will be informed that trial may continue into the next week.
14. The Court will conduct a jury instruction charge conference during the course of the trial.
15. The objections to Dr. Dilorreto's deposition designations will be resolved in a separate order.
16. Trial is set to begin Tuesday March 22, 2022, at 9:00 a.m.

**DONE AND ORDERED** at Fort Myers, Florida, this 15th day of  
March 2022.

  
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JOHN E. STEELE  
SENIOR UNITED STATES DISTRICT JUDGE

Copies:  
Parties of record